

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Twenty-First Century	)	CG Docket No. 10-210
Communications and Video Accessibility Act	)	
of 2010, Section 105, Relay Services for Deaf-	)	
Blind Individuals	)	

**Comments of the National Association of the Deaf**

The National Association of the Deaf (NAD)<sup>1</sup> submits these comments in response to the Commission's Public Notice of Proposed Rules on governing the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind.

The NAD commends the Commission for moving quickly since enactment of the Twenty-first Century Communications and Video Accessibility Act of 2010 to make telecommunications accessible for the deaf-blind community. Not many appreciate the fact that this community is an isolated one, largely cut off from ordinary means of communication. This includes telecommunication, which many people take for granted. For deaf-blind individuals, telecommunication is a pipe dream, being extremely difficult, expensive, or both. Very few can afford the technology, or CPE, that exists today, and similarly, such technology are unknown due to lack of research and development as well as nonexistent marketing.

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<sup>1</sup> The NAD was established in 1880 by deaf leaders who believed in the right of the American deaf community to use sign language, to congregate on issues important to them, and to have its interests represented at the national level. These beliefs remain true to this day, with American Sign Language as a core value. As a nonprofit federation, the mission of the NAD is to preserve, protect, and promote the civil, human, and linguistic rights of deaf Americans. The advocacy scope of the NAD is broad, covering the breadth of a lifetime and impacting future generations in the areas of early intervention, education, employment, health care, technology, telecommunications, youth leadership, and more. For more information, please visit [www.nad.org](http://www.nad.org).

## **I. EQUIPMENT DISTRIBUTION PROGRAMS**

The NAD supports the Commission's proposal to implement an 18-24 month pilot program of the National Deaf-Blind equipment Distribution Program (NDBEDP) with interim regulations.

In our previous comments to the FCC, the NAD expressed major concerns and even some doubts in using state EDPs. The major complaint cited by consumers is the lack of consistency of the level of service from state to state. One state may provide better service than the other. As such, the quality of service an individual will receive under the Commission's proposal will depend on where s/he lives, even though they are entitled to the same high quality service as promised by the law.

Related to the above concern, in addressing accountability, reporting and transparency, there will be different standards or evaluations methods across states which will contribute to the difficulty in measuring effectiveness of the pilot program.

The NAD believes that a model NDBEDP program consists of a central, national Deaf-Blind Center with several regional strategic locations across the nation with full services. Deaf-blindness is in a category of its own, and this disability cannot be compared with others. Issues that deaf-blind people differ greatly from even those who are blind or those who are deaf. Having a center that is rich in resources focusing on the needs of the deaf-blind community would be the best approach.

The NAD would be more confident in having state EDPs participate in the pilot program as long as the Commission adopts more stringent certification factors. This will ensure equal quality of services in all states.

Most importantly, the NAD cautions that the Commission must explicitly and unequivocally require that certified programs, whether a state EDP or another program, have the required level of the expertise in dealing with the deaf-blind population specifically – and not merely people with disabilities in general. Even expertise with dealing with people who are blind or people who are deaf is insufficient, given the very unique and specialized challenges and needs people who are both deaf and blind face.

Additionally, the staff must be able to use various methods of communications effectively. For example, they must be fluent in various forms of American Sign Language both receptively and expressively. Various forms include, but are not limited to: ASL, adapted signs (e.g. deaf-blind people with restricted peripheral vision may prefer the signer to sign in a very small space, usually at chest level), tactile ASL, and tracking. The staff also must be comfortable to – and not merely just able to – communicate in any method preferred by the deaf-blind individual, be it Tactile American Sign Language or any other form of communication.

The NAD, however, suggests that for the sake of consistency across programs that some form of collaboration be formed between programs and deaf-blind consumer organizations such as the American Association of the Deaf-Blind (AADB). This is especially necessary for community-based or faith-based private entities without as much expertise of working with the deaf-blind community as state EDPs.

## **II. CONSUMER ELIGIBILITY**

### **a. Definition of Individuals who are Deaf-Blind**

The NAD maintains that the Commission should interpret the definition in the Helen Keller National Center Act (HKNC Act) as broadly as possible. A narrow interpretation of the definition would disqualify over half of the population who would be considered deaf-blind

otherwise. For example, a deaf person going blind may lose his/her driving privileges before becoming legally blind. In such case, this individual also needs CPE, however such narrow definition would not render him/her eligible for the NDBEDP. Ideally, the definition of deaf-blindness should not include specific visual acuity parameters and decibel losses and instead focus on the combination of visual and hearing losses that creates the unique challenges that this population faces.

In the alternative, the Commission's proposal of having the third prong of the KFNC Act definition apply to the ability of an individual to use the communication services covered by Section 105 is acceptable. This would benefit a somewhat larger segment of the population.

#### **b. Income Eligibility**

The NAD appreciates the Commission's through consideration of the very high cost of specialized equipment for people who are deaf-blind and the unusually high medical and related costs associated with being deaf-blind. However, simply setting the income threshold at 400 percent of the Federal Poverty Guidelines as defined at 42 U.S.C § 9902(2) is insufficient to address the varying economical conditions across the nation and the unique financial concerns of individuals who are deaf-blind.

The Commission mentions the desire for consistency across states in the NPRM (paragraph #20). However, given that the cost of living varies from U.S. city to city – not merely state to state, having a fixed number to define low-income would produce unfair results. For example, one would have to earn \$72,158 in San Francisco, California to live as comfortably as someone making \$40,000 in Birmingham, Alabama.<sup>2</sup> Hence, given that a

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<sup>2</sup> <http://cgi.money.cnn.com/tools/costofliving/costofliving.html>, last visited February 2, 2011.

person earns more or less depending on where s/he lives, it is unfair to have the same figure apply to everyone in every city.

Furthermore, even for those making almost 400% of the poverty guidelines, covered specialized telecommunication equipment still is intolerably expensive. 400% of the poverty line is approximately an annual income of \$43,550. Covered equipment ranges between \$5,000 and \$10,000. Consequently, a person making \$43,550 a year would have to spend almost a quarter of his income on a \$10,000 piece of telecommunication equipment.

Such purchases are not made once in a lifetime. Generally, deaf-blind individuals experience a gradual or rapid vision loss, hearing loss, or both during their life. This requires constantly re-evaluating of their needs, the purchase of new equipment, and re-training to meet their changing communication needs.

Additionally, each deaf-blind individual may have additional medical and related costs resulting from their disability. Such costs vary from individual to individual. It would not be fair to penalize those with higher medical costs and rewarding the healthier individuals.

Accordingly, the NAD urges the Commission to apply a sliding income affordability scale in determining who has low income. A base of such scale may be 400% of the Federal Poverty Guidelines, and be adjusted to account for the individual's city's cost of living and his/her expenses related to his/her deafness/blindness.

### **III. COVERED EQUIPMENT AND RELATED SERVICES**

#### **a. Specialized CPE**

The NAD has no issues with certified NDBEDP programs be given the discretion to determine the specific equipment need by individual consumers during the NDBEDP's pilot period. It asks, however, that the certified NDBEDP participants provide software updates

automatically as needed and at no charge as long as covered devices are connected to the Internet. Additionally, in case a device malfunctions and full functionality is not achievable through repairs, then the covered device should be replaced with a current functionally equivalent model.

The NAD does understand the concern regarding the allocation of limited funding among eligible individuals and is not opposed to the idea of a funding cap per person. The NAD asks the Commission to allow individuals to return and exchange equipment. This is necessary because, as explained above, the nature of one's disability often changes significantly over time, which requires change in the type of equipment that best fits that individual.

A possible option for the Commission to consider regarding funding caps is to create a tier scheme based on needs assessment and product availability, and differentiate between off-shelf (mainstream) equipment (which is easier to obtain) and specialized equipment (more rare).

#### **b. Research and Development**

Technology advancement among products serving the deaf-blind community has lagged considerably compared to advancement of technology in general. This is partly due to the community being a very small and specialized market. As a result, regulations and government funding, not innovation, have pushed for the creation of equipment available to deaf-blind individuals today.

Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) requires the Commission to create rules to ensure that telecommunications services are “accessible by individuals who are deaf-blind”.<sup>3</sup> Telecommunication services include “advanced communications, including interexchange services and advanced

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<sup>3</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010), to be codified at 47 U.S.C. § 719.

telecommunications”.<sup>4</sup> Given the outdated inventory of equipment available today and how not every deaf-blind individual’s needs are being met, the Commission cannot fulfill its obligations to provide access to telecommunications services, especially advanced communications without ensuring that new products come on the market. Providing resources for research and development would enable the Commission to ensure an effective distribution program, and such action is inherent in the statute.

Even though there is a compelling need to provide funding for research and development, the NAD agrees with the Commission that this is not the right time to allocate some of the \$10 million fund for this purpose. Given the short time period of the pilot program and the limited amount of money from the Commission, the money would be better used towards the implementation of effective and high-quality services across the country for equipment distribution for the deaf-blind community. This is especially true in light of the significant expense of training. Once an effective solution is identified, the Commission should actively push for funding for research and development to ensure that deaf-blind individuals’ access to telecommunication are on par with the rest of the society.

### **c. Individualized Assessment of Communication Needs**

The NAD concurs that the certified NDBEDP participants be given the discretion to determine the need for individualized assessment. The NAD, however, strongly urges the Commission to establish guidelines to ensure that deaf-blind individuals receive the proper telecommunication equipment according to their capabilities and preferences.

Specifically, the Commission needs to consider the following issues in ensuring that each qualified individual gets equipment that best fits her/his needs. The communication needs of a particular individual may change over time. Some deaf-blind individuals experience progressive

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<sup>4</sup> *Id.*

loss of vision or hearing or both. As such, the evaluation and assessment of deaf-blind individual may require further evaluation and assessment over a period of time.

One example is the transition from printed material to Braille. Many deaf-blind individual have experience different stages of difficulty in learning Braille. For some of the deaf-blind who experience progressive hearing loss, learning any type of sign language can be a major challenge.

For some deaf-blind individuals who use ASL, they may experience some difficulty in the transition from using ASL visually to tactile ASL. In most cases the pace of this form of communication is much slower due to obtaining all visual information and communication through tactile means.

#### **d. Training**

As noted above, the CVAA grants the Commission the authority to establish equipment distribution programs that result in access to telecommunications services.<sup>5</sup> Inherent in such programs is ensuring that qualified applicants are able to use equipment they receive to access telecommunication services. Hence, the Commission has the discretion under Section 105 to permit money to be used towards training.

The NAD encourages the Commission to devise strategies to remove communication barriers for deaf-blind individuals seeking technical support from the distributor for their equipment. Not all deaf-blind individuals are fluent in English, the language used in training manuals. Furthermore, technical support staff do not always fully appreciate the various methods of communication used by deaf-blind people such as a TTY or videophone. Consumers share stories of their relay calls being rejected and only being able to connect to technical support

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<sup>5</sup> *Id.*



if they rely on their state program administrators to call on their behalf.

One such strategy to remedy this is for the Commission to create a technical support hotline to support both deaf-blind users and trainers. This hotline can be run by an experienced non-profit familiar with troubleshooting these types of issues or knowledgeable Commission staffers.

The Commission needs to ensure that individuals who are deaf-blind can travel to a site for training – as well as for assessment and evaluation. The NAD strongly urges the Commission to consider these issues:

- a. Support Service Providers (SSPs) are usually trained people who provide visual information, simple communication and guidance for deaf-blind individuals. Due to the communication and vision issues, the SSP is required to guide deaf-blind individuals to various locations, including restaurants, hotels, equipment distribution sites, and many others services needed by the deaf-blind people;
- b. Interpreting Services may be required during training and formal communications. Due to the nature of providing tactile signing, three interpreters are required. Any less would mean extreme fatigue for the interpreters;
- c. If a deaf-blind individual receives training through a videophone, it is likely that this individual will require the service of a Communication Facilitator (CF) to enable the video conversation. A CF is a person who copies the signs from the videophone screen into the deaf-blind individual's preferred communication mode; and
- d. Traveling expenses such as those for a hotel, meals and traveling will need to be included in the NDBEDP. Most deaf-blind individuals are not working and are on a fixed income. Even if the deaf-blind individual is employed, this expense is usually beyond his or her means.

Additionally, the NDBEDP may incur additional expenses that are not covered in these comments.

#### **e. Maintenance, Repairs and Warranties**

The NAD urges the Commission to require the NDBEDP to cover maintenance for the expected life of the equipment, regardless of the warranty given by the manufacturer. Often, a

manufacturer's warranty covers a much shorter time frame than the expected life period. A qualified individual would not achieve access to telecommunication services - the purpose of the NDBEDP – if s/he has a product that does not function properly.

As mentioned above, due to communication barriers, deaf-blind consumers often have problems contacting technical support. This includes obtaining warranty services. A possible solution is to have the NDBEDP certified programs allow deaf-blind consumers to swap their equipment when their equipment malfunctions. This will ensure that the deaf-blind people will be able to continue their activities with needed equipment with minimal disruption and without the burden of dealing with warranty services, not to mention the unanticipated time and expenses incurred with additional training, traveling and other expenses. With this approach, the NAD urges that the certified entity handle the warranty services when the equipment is swapped.

If the consumer can no longer use the equipment, the NAD concurs that the equipment should be returned to the EDP for refurbishing and/or upgrading as needed for other deaf-blind consumers to use.

The NAD also agrees that malfunctions due to negligence and misuse should not be covered by the program.

#### **IV. CONCLUSION**

The NAD respectfully requests that the Commission proceed with the rule-making proceedings consistent with the recommendations discussed therein.

Respectfully submitted,

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February 4, 2011-02-04

Debra J. Patkin  
Staff Attorney  
National Association of the Deaf  
8630 Fenton Street, Suite 820

Silver Spring, MD 20910  
301.328.1983  
debra.patkin@nad.org